



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/695,551	10/24/2000	Roe Peterson	1009-04-01	2563

1473 7590 10/05/2006

FISH & NEAVE IP GROUP  
ROPES & GRAY LLP  
1251 AVENUE OF THE AMERICAS FL C3  
NEW YORK, NY 10020-1105

EXAMINER

KYLE, CHARLES R

ART UNIT	PAPER NUMBER
----------	--------------

3624

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/695,551	Applicant(s) PETERSON, ROE	
	Examiner Charles Kyle	Art Unit 3624	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2, 5-7, 8, 10-11, 14, 16-22 and 25-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2, 5-7, 8, 10-11, 14, 16-22 and 25-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 2, 5, 7, 8, 10-11, 14, 16-19, 21-22 and 25-26** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0023038 *Fritsch et al* in view of US 6,813,612 *Rabenold et al* and further in view of *Public Notice, Federal Communications Commission, First Paging Service Spectrum Auction Scheduled for December 7, 1999 Comment Sought on Reserve Prices or Minimum Opening Bids and other Auction Procedural Issues*, hereinafter, *FCC*.

**With respect to Claim 2**, see the discussion of Claim 5 and *Fritsch* discloses that a highest bid wins at Background of the Invention.

**As to Claim 5**, *Fritsch* discloses the invention substantially as claimed, including in a method of conducting an online auction (Para. 3), the steps of:

- a) providing an auction web site system (Para. 20)  
including a merchandise database (Para. 26, lines

Art Unit: 3624

10-12) of information pertaining to auction lots  
to be sold (Para.14);

- b) with respect to an auction lot, using said web  
site system to conduct an auction in the  
following steps:
  - i) assigning an opening auction price  
(Para. 16, line 1) and at least one  
predetermined bid increment (Para. 16,  
lines 3-6) to said auction;
  - ii) displaying to a bidder the current auction  
price of said lot (Fig. 5, ele. 370) as well as  
said predetermined bid increments (Fig. 5,  
eles. 390 and 370; predetermined bid  
increment = Make this bid (\$45.00) -  
Current Bid (\$44.00) = \$1.00)

Art Unit: 3624

- iii) inducing bidders to place bids by selecting from said plurality of predetermined bid increments, the amount of a bid being the current auction price plus the selected predetermined bid increment (Fig. 5, ele. 390), details of said bids being transmitted to and recorded in said web site system (Paras. 20-29);
- iv) upon occurrence of a revision event (Par. 16, lines 16-22), revising said predetermined bid increments and refreshing the display of said revised predetermined bid increments to bidders (Figs. 5 and 6, change in increment from \$1.00 to \$0.25);
- v) upon occurrence of an auction-closing event, accepting no further bids and determining the winning bidder based on bids having been stored in said Web site system<sup>9</sup>Fig. 12, para. 38), wherein said revision event

comprises the detection of a preprogrammed  
condition by said web site system (para. 16).

*Fritsch* does not specifically disclose a feature of a plurality of predetermined bid increments from which an increment is selected thereby simultaneously transmitting details of a bid to a website system and recording the bid in the system. *Rabenold et al* discloses this limitation at Figs. 13B and 16, and Col. 13, lines 19-40, at least. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Fritsch* with the plural updating bid increments of *Rabenold* because this would provide a rapid means for a bidder to indicate and transmit a competitive bid to an auction system.

*Fritsch* does not specifically disclose that the revision event resulting in bid increment change comprises a preprogrammed condition related to passage of time between bids. *FCC* discloses this limitation at pages 5-6, bracketed text. It would have been obvious to one of ordinary skill in that art at the time of the invention to modify *Fritsch* to include the condition related to passage of time between bids to modify bid increments disclosed by *FCC* because this would allow bid price improvement by using smaller, more palatable bid increments to increase bidder interest.

**With respect to Claim 7**, *Fritsch* discloses auction closing based on a preprogrammed condition (equality of bid and offer) at Fig. 12 and Para.16, lines 12-14.

**With respect to Claims 8 and 22**, see the discussion of Claims 5 and 25 respectively.

**As to Claims 10 and 19**, *Fritsch* discloses recalculation of bid increments at Para. 16, lines 19-20.

**Concerning Claim 11**, *Fritsch* discloses lowering bid increments at Para. 16.

**As to Claims 14 and 17**, *Fritsch* discloses a bidder browser for auction information at Para. 21.

**As to Claim 16**, *Fritsch* discloses a bidder communicating with the web system from a bidder computer at Fig. 2 and Paras. 26 and 27.

**Concerning Claim 18**, *Fritsch* discloses manual revision of increments at Para. 16, lines 17-18.

**Concerning Claim 21**, see the discussions of Claims 7 and 25.

**As to Claim 25**, see the discussion of Claim 5. *Fritsch* further discloses a web based auction system connected to bidders at Fig. 2, a bid management system containing bid details at Paras. 12 and 26 and an increment setting system at Paras. 15-16.

**As to Claim 26**, *Fritsch* discloses a medium for storing a computer program operative to perform the method at Paras. 19-30.

**Claims 6 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0023038 *Fritsch et al* and US 6,813,612 *Rabenold et al* in view of *Public Notice, Federal Communications Commission, First Paging Service Spectrum Auction Scheduled for December 7, 1999 Comment Sought on Reserve Prices or Minimum Opening Bids and other Auction Procedural Issues*, hereinafter, *FCC* and further in view of US 6,230,147 *Alaia et al*.

**As to Claim 6**, *Fritsch* discloses the invention substantially as claimed. See the discussion of Claim 5. *Fritsch* does not specifically disclose manually closing an auction. *Alaia* discloses this limitation at Col. 9, lines 25-41. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify *Fritsch* with manual auction as disclosed by *Alaia* because this would allow auctioneers more control over the auction process.

**With respect to Claim 20**, see the discussion of Claims 25 and 6.

### ***Response to Arguments***

Applicant's arguments are not persuasive. The fundamental argument presented at pages 8-11 of Remarks is that *FCC* does not disclose revision of bid increments based on passage of time between placement of bids. The Examiner disagrees. *FCC* does disclose revision of bids (...calculate minimum bid increments, as cited by Applicant at page 9) based on the passage of time between placement of bids (computation is based on an activity indices of different rounds, as cited by Applicant at page 9; "activity" is clearly defined by the number of bids *per unit time*"). The fact that *FCC* uses different phrasing for these concepts does not alter the fact that it discloses the same concepts recited in the Claims and argued by Applicant. Applicant's phrasing of "revising... based upon the passage of time" is so broad as to be met by the disclosure of



*FCC.* Applicant argues that the concepts of the Claims and art are different but does not comprehend the similarities set forth by the Examiner directly above. Applicant's argument regarding the other Claims are based on this same premise and are likewise rejected.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Kyle whose telephone number is (571) 272-6746. The examiner can normally be reached on 6:30 to 3:00.

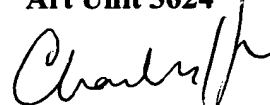
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3624

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

crk  
September 28, 2006

**Primary Examiner**  
**Charles Kyle**  
**Art Unit 3624**

A handwritten signature in black ink, appearing to read "Charles Kyle", with a stylized flourish at the end.